No. 22-105

In the

Supreme Court of the United States

COINBASE, INC.,

Petitioner,

v.

ABRAHAM BIELSKI,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS

The Civil Justice Association of California (CJAC) welcomes the opportunity to address as *amicus curiae*[1] the issue this case presents:

> Does a non-frivolous appeal from the denial of a motion to compel arbitration oust a district court's jurisdiction to proceed with litigation pending appeal, as the Third, Fourth, Seventh, Tenth, Eleventh and D.C. Circuits have held, or does the district court retain discretion to proceed with litigation while the appeal is pending, as the Second, Fifth, and Ninth Circuits have held?

Founded in 1979, CJAC is a non-profit organization representing businesses, professional associations and financial institutions. Its principal purpose is to educate the public about ways to make our civil liability laws more fair, certain, economical and efficient.

CJAC's members employ tens of thousands of people in California and hundreds of thousands nationally in the manufacture of products and the provision of services. Most CJAC members have chosen, as have many employers throughout the country,[2] to resolve

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[1] No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from amicus, its counsel, and its members made a monetary contribution to the preparation or submission of this brief.

[2] According to one study, approximately 55% of the workforce, or more than 60 million employees, are covered by employment

disputes with their employees over employment matters, including wage and hour issues, through arbitration agreements. Contractual arbitration between and amongst commercial providers of goods and services is also a prevalent means of dispute resolution for CJAC's members. In addition, "[a]rbitration is commonly used in areas such as construction because the decision-maker can be an expert in the field. Large banks and telecommunications companies use arbitration in order to keep disputes out of the public." Kristen M. Blankley, *The Ethics and Practice of Drafting Pre-dispute Resolution Clauses*, 49 CREIGHTON L. REV. 743, 770 (2016) (footnotes omitted).

CJAC sets great store in the Federal Arbitration Act (FAA) and the consistent line of this Court's opinions upholding that statute's broad preemptive sweep requiring agreements to decide disputes by arbitration be placed on an "equal footing" with other contracts and enforced accordingly. The decision here, however, thwarts contractual arbitration by denying an automatic stay of litigation in the district court while the petitioner, Coinbase, Inc., appeals that court's refusal to order arbitration pursuant to the signed arbitration contract between it and respondents. Consequently, both cases are proceeding in the district courts while Coinbase pursues its right under the FAA to obtain interlocutory relief on whether it must litigate these cases at all.

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arbitration agreements. Alexander J.S. Colvin, *Economic Policy Institute* (April 6, 2018), available at https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration/.

By denying an automatic stay of proceedings pending the appeal of a denial of arbitration, the Ninth Circuit has effectively eviscerated the "two prudential concerns cited by [the majority of] courts requiring automatic stays of litigation pending a § 16(a) appeal: (1) the rights of parties to an arbitration agreement not to be subjected to litigation and (2) general principles of efficiency." Roger J. Perlstadt, *Interlocutory Review of Litigation-avoidance Claims: Insights from Appeals under the Federal Arbitration Act*, 44 AKRON L. REV. 375, 382 (2011). Both of these stated "concerns" implicate CJAC's and the FAA's shared objectives of "fairness" and "efficiency."

SUMMARY OF ARGUMENT

The plain statutory text of the FAA supports the imposition of an automatic stay. Appellate jurisdiction usually entails an automatic stay, and when Congress intends to the contrary, then statutory language—absent here—is used.

Further, the purpose of allowing an immediate interlocutory appeal also supports the conclusion that there should be a stay. Judicial and party resources are wasted when there is no stay. Forcing parties to litigate in two courts at once is inefficient and doubly unfair to a party who—based on an arbitration provision—should not have to be litigating in court at all.

Finally, it is worth noting that the jurisdictions with the minority rule—the Second, Fifth, and Ninth Circuits—include the major financial and commercial centers in the United States (i.e., New York, Texas, and

California). Businesses in these important jurisdictions should not have to labor under the existing inefficient and unfair rule. This Court should impose a consistent nationwide rule in favor of an automatic stay of trial level litigation while an appeal is pending from the denial of arbitration.

ARGUMENT

I. THE MAJORITY JURISDICTIONAL RULE GRANTING AUTOMATIC STAYS UPON APPEAL FROM AN ARBITRABILITY DECISION COMPLIES WITH AND FURTHERS THE FAA, WHILE THE MINORITY RULE FAVORING JUDICIAL DISCRETION THAT WAS APPLIED HERE, CONFLICTS WITH AND IMPEDES THE FAA.

We begin at the beginning, "away from open-ended policy appeals and speculation about legislative intentions and toward the traditional tools of interpretation judges have employed for centuries to elucidate the law's original public meaning"—the text of the FAA, particularly section 16 respecting appeals from lower courts refusing to enforce arbitration contracts. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2442 (2019) (concurring opinion by Gorsuch, J.).

A. The Text of the FAA Favors Issuance of an Automatic Stay when a Party Appeals from the Denial of a Motion to Compel Contractual Arbitration.

In its 1988 enactment of section 16 of the FAA[3], Congress sought to promote arbitration over litigation by treating interlocutory orders differently according to whether the order granted or denied arbitration. Interlocutory orders denying arbitration are appealable under section 16 even though they are not "final." By contrast "interlocutory" orders compelling arbitration are *not* appealable unless certified for review pursuant to 28 U.S.C. § 1292(b). In general, then, orders compelling arbitration may not be appealed, while those refusing to compel arbitration may be appealed. "This intentional absence of parallelism provides the strongest statutory basis for the judicial preference for arbitration." Stephen K. Huber, *The Arbitration*

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[3] Section 16(a) provides:

> (a) An appeal may be taken from—
>
> (1) an order—
>
> (A) refusing a stay of any action under section 3 of this title,
>
> (B) denying a petition under section 4 of this title to order arbitration to proceed,
>
> (C) denying an application under section 206 of this title to compel arbitration,
>
> (D) confirming or denying confirmation of an award or partial award, or
>
> (E) modifying, correcting, or vacating an award;
>
> (2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or
>
> (3) a final decision with respect to an arbitration that is subject to this title.

Jurisprudence of the Fifth Circuit, 35 TEX. TECH. L. REV. 497, 521 (2004).

The House Report concerning section 16 states that the purpose of the amendment is to:

> Improve the appellate process in the Federal courts of appeals with respect to arbitration . . . [by providing for] interlocutory appeals . . . when a trial court rejects a contention that a dispute is arbitrable under an agreement of the parties and instead requires the parties to litigate.[4]

In other words, section 16's language that "an appeal may be taken from . . . an order . . . refusing a stay of any action under [FAA] section 3 of this title,"[5] is an exception to the general "finality rule" prerequisite for an appeal.

According to *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624 (2009) (*Carlisle*), section 16 clearly and unambiguously entitles any litigant who moves for a stay under section 3 of the FAA to an immediate appeal from the district court's denial of the motion. *Id*. at 628. Most importantly, an immediate appeal is available regardless whether the underlying merits of the motion actually entitle the litigants to a stay.

Carlisle recognizes that a number of appellate courts had declined jurisdiction over section 3 appeals in circumstances similar to those presented in that

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[4] H.R. Rep. No. 100-889, at 36-37 (1988), reprinted in 1988 U.S.C.C.A.N 5982, 5997.

[5] 9 U.S.C. § 16(a)(1)(A).

case, but concluded that those courts did so by "conflating the jurisdictional question with the merits of the appeal." *Id.* at 629. Courts that declined jurisdiction reasoned that because stay motions premised on equitable estoppel sought to expand arbitration agreements, the motions were not cognizable, and thus not "under" sections 3 and 4 of the FAA. *Id.* According to *Carlisle*, however, this was an inappropriate basis for the jurisdictional determination. *Id.*

Carlisle explains that jurisdiction over an appeal must be determined by focusing on the "category" of order being appealed. With regard to a motion to stay the proceedings, the unambiguous terms of section 16(a) make the merits of the stay irrelevant, as "even utter frivolousness of the underlying request for a section 3 stay cannot turn a denial into something other than 'an order . . . refusing a stay of any action under section 3.' " *Id.* at 629, citing 9 U.S.C. § 16(a). Therefore, the fact that each petitioner explicitly moved for a stay pursuant to section 3 signified that the appellate court had jurisdiction to review the district court's denial of the motion. *Id.* at 628.

Though section 16 does not *expressly* provide that an appeal from a district court's refusal to enforce an arbitration agreement *automatically* "stays" the proceedings in the district court, its text and commonsense strongly support that conclusion. First, the plain language of section 16 states that "[a]n appeal may be taken from . . . an order . . . refusing a stay of any action under section 3 of this title . . . [or] denying a petition under section 4 of this title to order

arbitration to proceed." 9 U.S.C. § 16(a)(1)(A)-(B). An appellate court's review of a denial of a motion to compel arbitration under section 16 of the FAA is not limited to a final order. *See Bombardier Corp. v. Nat'l R.R. Passenger Corp.*, 333 F.3d 250, 253 (D.C. Cir. 2003).

Second, when Congress seeks to depart from the *automatic stay* of lower court proceedings upon the filing of an authorized interlocutory appeal, it says so expressly. *See*, *e.g.*, 28 U.S.C. §§ 1292(a)(1), 1292(a)(2) and 1292(a)(3) ("proceedings . . . in the court below shall not be stayed" upon appeal). Similarly, this Court's prescription for permissive appeals of orders granting or denying class certification in Federal Rule of Civil Procedure 23(f) states that "[a]n appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders." No such comparable language is found in section 16 of the FAA. *See* Brief for Petitioner, pp. 34-38. Accordingly, where Congress expressly provides that a stay is *not* automatic, silence as to stays on appeal suggests they are automatic or may be treated by the courts as such. *Cf.*, *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003) (when Congress has intended to create exceptions to [categorical] law requirements, "it has done so clearly and expressly").

B. The Purpose of the FAA Favors an Automatic Stay.

The FAA's purpose also weighs heavily in favor of an automatic stay of an interlocutory appeal from a denial to arbitrate in accordance with a contract by the parties to do so. As this Court has repeatedly stated,

that "overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings. Parties may agree to limit the issues subject to arbitration, to arbitrate according to specific rules, and to limit with whom they will arbitrate." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (citations omitted).

Affording parties discretion in crafting or agreeing to arbitration contracts permits "efficient, streamlined procedures tailored to the type of dispute." *Id*. The ambit of opportunity to tailor an arbitration agreement to the parties' needs is broad, offering *inter alia* the following in lieu of traditional litigation procedures: (1) confidentiality and privacy of the arbitral proceedings; (2) ability to reduce or preclude certain types of damages and prevent class actions; (3) the ability to streamline and limit discovery, as well as provide for evidentiary rules such as the admission of certain expert opinion not precluded by hearsay; and (4) the possibility of a speedier and less costly resolution to the dispute. *See*, *e.g.*, Paul E. Knag & Daniel J. Kagan, *Why Arbitration is the Preferred Dispute Resolution Vehicle for Most Integrated Delivery System Disputes* (2016) 71 DISP. RESOL. J. 127, 130.

This Court has emphasized in numerous opinions that "the FAA was designed to promote arbitration." These opinions describe the Act as "embod[ying] [a] national policy favoring arbitration," *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443, 126 S. Ct. 1204 (2006), and "a liberal federal policy favoring arbitration agreements," *Moses H. Cone Memorial*

Hospital v. Mercury Construction Corp., 460 U.S. 1, 24 (1983); *see also Hall Street Assocs. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008). Thus, in *Preston v. Ferrer*, the Court said, "A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results,' which objective would be 'frustrated' by requiring a dispute to be heard by an agency first." 552 U.S. 346, 357-58 (2008). That rule . . . would "at the least, hinder speedy resolution of the controversy." *Id*. at 358. *Concepcion*, 563 U.S. at 346.

But the benefits of more expeditious and less costly resolution to a dispute that arbitration offers over litigation, "are eroded, and may be lost or even turned into net losses, if it is necessary to proceed [without a stay from an appeal of the district court's order denying arbitration] in both judicial and arbitral forums, or to do this sequentially." *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504, 505-06 (7th Cir. 1997). When arbitrability is being determined at the appellate level while the merits are being decided at the district court level, the party who counted on arbitration to reduce costs and speed resolution of any dispute is exposed to two sets of court costs and a substantial increase in attorneys' fees. "The worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to court to have the award enforced." *Id*. at 506.

As the Eleventh Circuit explained in endorsing the automatic stay rule, "If the court of appeals reverses and orders the dispute arbitrated, then the costs of the

litigation in the district court incurred during appellate review have been wasted and the parties must begin again in arbitration." *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004); *see McCauley v. Halliburton Energy Services, Inc.*, 413 F.3d 1158, 1162 (10th Cir. 2005) (the failure to stay litigation pending such an interlocutory appeal "results in a denial or impairment of the appellant's ability to obtain its legal entitlement to avoidance of litigation"); *see also* Edith H. Jones, *Appeals of Arbitration Orders-Coming out of the Serbonian Bog*, 31 S. TEX. L. REV. 361, 375-76 (1990) ("[T]he expense and delay associated with preparation for trial would obviate the benefits of arbitration, producing a costly error should the district court's refusal to enforce an arbitration agreement be reversed on appeal.").

The Tenth Circuit soon joined the other majority jurisdictions preferring the "bright-line jurisdictional" rule of an automatic stay. *McCauley* pointed out that its circuit has favored automatic stays in similar situations, citing stays of litigation following an appeal concerning a district court's denial of a party's right to qualified immunity. *Stewart v. Donges*, 915 F.2d 572, 575-76 (10th Cir. 1990). The rule allowing divestiture after non-frivolous appeals "provides valuable certainty and clarity by creating a bright jurisdictional line between the district court and the circuit court." *Id.* at 577. The Tenth Circuit reaffirmed and solidified its position in *Hardin v. First Cash Financial Services, Inc.*, 465 F.3d 470 (10th Cir. 2006), where it refused to limit divestiture to appeals for strictly dispositive matters because this would still place unbargained-for

costs on the parties and disrupt the parties' preference for non-judicial dispute resolution. *Id*. at 474 n.2.

Levin v. Alms & Associates, Inc., 634 F.3d 260 (4th Cir. 2011) wrestled with whether an interlocutory appeal on the arbitrability of a dispute divested the district court of jurisdiction to hear the case on the merits. *Levin* found the continuation of discovery at the district court level while the arbitrability appeal proceeded was tantamount to continuation of the district court trying the case on its merits. "Discovery is a vital part of the litigation process and permitting discovery constitutes permitting the continuation of the litigation." *Id*. at 264. *Levin* concluded that automatic divestiture of the district court's jurisdiction is appropriate when the arbitrability of a dispute is appealed. *Id*. at 266.

1. Permitting discovery in the district court pending an appeal of arbitrability conflicts with the FAA's objectives.

Limitations on discovery in contractual arbitration is a feature that makes it attractive to parties over conventional litigation. "Avoidance of the delay and expense associated with discovery is still one of the reasons parties choose to arbitrate." Ian R. Macneil, Richard E. Speidel & Thomas J. Stipanowich, FEDERAL ARBITRATION LAW: AGREEMENTS, AWARDS, AND REMEDIES UNDER THE FEDERAL ARBITRATION ACT § 34.1 (1994 & Supp. 1999).

The Fourth Circuit recognized in *COMSAT Corp. v. Nat'l Science Found*., 190 F.3d 269, 276 (4th Cir. 1999) that "[p]arties to a private arbitration agreement forego

certain procedural rights attendant to formal litigation in return for a more efficient and cost-effective resolution of their disputes." "[L]imited discovery provisions during arbitration . . . are in keeping with the policy underpinnings of arbitration." *Burton v. Bush*, 614 F.2d 389, 391 (4th Cir. 1980). "Because discovery is generally limited and the grounds for challenging arbitration awards are narrow, arbitration is far less expensive than most litigation. Every arbitration dispute can be decided in a timely manner—fairly, cost-effectively, and with finality." Jane Michaels, *Effective Advocacy in Arbitration*, 47 COLO. LAW 26, 27 (April 2018).

Thus "[u]nlimited discovery is incompatible with the goals of efficiency and economy. The Federal Rules of Civil Procedure are not applicable. Discovery should be limited to those items [for] which a party has a substantial, demonstrable need." Thomas J. Stipanowich, *Arbitration and Choice: Taking Charge of the "New Litigation,"* 7 DEPAUL BUS. & COMM. L. J. 383, 433 (2009).

"Discovery, particularly electronic discovery, [which respondents intend to pursue] can be very expensive and time-consuming. The longer it takes to complete pre-arbitration discovery, the more time and resources the parties expend, and the more arbitration's key benefits are eroded." Kevin Mason, *Will Discovery Kill Arbitration?*, 2020 J. DISP. RESOL. 207.

Notably, this Court has explicitly rejected the argument that arbitration unfairly curtails discovery (*Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991) (noting that "by agreeing to arbitrate, a party

trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration"), and arbitration providers like the American Arbitration Association, the nation's largest full-service alternative dispute resolution provider, have adopted rules and policies expressly designed to protect consumer rights and eliminate due process concerns. Steven C. Bennett & Dean A. Calloway, *A Closer Look at the Raging Consumer Arbitration Debate*, 65 DISP. RESOL. J. 28, 32 (Oct. 2010).

Yet respondents here have been allowed to conduct discovery in the district court under the Federal Rules of Civil Procedure while petitioner proceeds with its appeal on arbitrability without a stay. This defeats the FAA's objective of enforcing arbitration contracts according to their terms in order to achieve streamlined efficiency and economy in resolving any disputes between the parties.

2. The "bright line" majority rule for an *automatic* stay on appeal of an order denying arbitration rests on sounder reasoning than the minority rule's *discretionary* stay approach.

The minority jurisdictional rule that makes a stay of the district court's proceedings *discretionary* pending appeal of its refusal to order a case to arbitration, rests on three arguments that do not wash. One of these is that the issue of arbitrability is "separate" from the merits of the underlying dispute. *See Weingarten Realty Investors v. Miller*, 661 F.3d 904, 909 (5th Cir. 2011). Perhaps; but even if conceptually separate from

each other, arbitrability is still the *threshold* issue. Arbitrability is antecedent to the merits because the appeal decides whether the matter should even be litigated, so the question of how the merits may be determined is precisely what the court of appeals must decide. As *Bradford-Scott* explained in rejecting the minority jurisdictional position that arbitrability and the merits can be split from each other with one issue decided by the district court and the other by the appeals court, "Whether the litigation may go forward in the district court is precisely what the court of appeals must decide." 128 F.3d at 506.

A second argument that minority jurisdictions use to support a discretionary over an automatic stay, is that automatic divestiture will encourage litigants to delay resolution of their losing claims by filing frivolous appeals. However, the majority circuits recognize this potential abuse and have responded with a protection used in similar contexts. *See Bradford-Scott*, *supra*, 128 F.3d at 506 (any court adopting the majority rule can simply prevent divestiture when a party takes a frivolous appeal); *see also Abney v. United States*, 431 U.S. 651, 662 n.8 (1977) ("[i]t is well within the supervisory powers of the courts of appeals to establish summary procedures and calendars to weed out frivolous claims" for appeals from a denial of double jeopardy); *Goshtasby v. Bd. of Trs. of the Univ. of Ill.*, 123 F.3d 427, 428-29 (7th Cir. 1997) (allowing an automatic stay for only non-frivolous appeals from a denial of sovereign immunity); *Stewart v. Donges*, 915 F.2d 572, 577-78 (10th Cir. 1990) (allowing an automatic stay for only non-frivolous appeals from a denial of qualified immunity); *Apostol v. Gallion*, 870

F.2d 1335, 1339 (7th Cir. 1989) (same); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007) ("In [a previous order] we expressed our agreement with the majority rule of *automatic divestiture* where the Section 16(a) appeal is *neither frivolous nor forfeited*.") (emphasis added). Notably, this Court's approval of the phrasing of the question to be decided assumes that the appeal seeking a stay is not frivolous.[6]

The third argument is that an automatic stay is unnecessary because discretionary stays are always available from the district court and can adequately protect parties during arbitrability appeals. These two consolidated cases refute that argument by having denied stays to petitioner. Indeed, once a district court following the discretionary stay approach denies enforcement of the arbitration agreement, it is unlikely to grant a stay to an aggrieved party of the court's ability to proceed with the litigation pending an arbitrability appeal. This is because the four-factor test generally applicable for a discretionary stay from the district court on appeal requires the applicant to show he or she: (1) is likely to succeed on the merits; (2) will be irreparably injured absent a stay; (3) the stay will not substantially injure the other parties interested in

[6] The "safeguard mechanism in *McCauley*, 413 F.3d at 1162 seems to effectively balance the practical considerations of burdensome litigation expressed by the majority of courts and the concerns of abuse and frivolity expressed by the minority of courts." Joanna L. Hair, *Weingarten Realty Investors v. Miller: Does an Appeal from a Denial of a Motion to Compel Arbitration Automatically Divest a District Court of its Jurisdiction?*, 36 AM. J. TRIAL ADVOC. 191, 209 (2012).

the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770 (1987).

Satisfying the first factor of the *Hilton* test is most difficult because it requires the district court to admit it erred in denying defendant's motion to compel arbitration, and that the court of appeals is likely to reverse its decision. "Presumably, any district court judge refusing to enforce a purported arbitration agreement believes it is not sufficiently likely that such a decision will be reversed on appeal; if the judge did so believe, he or she should have ruled the other way." Perlstadt, *supra*, 44 AKRON L. REV. at 400. Moreover, the "irreparable injury" factor runs headlong into the doctrinal revetment that "the time and expense of litigation and [the loss] of cost saving benefits of arbitration" is *not* an "irreparable injury." *Weingarten Realty Investors, supra*, 661 F.3d at 910.

As a result, application of the *Hilton* factors generally has been far from uniform. One commentator noted at least four different procedures that have been used by courts to weigh the *Hilton* factors. John Y. Gotanda, *The Emerging Standards for Issuing Appellate Stays*, 45 BAYLOR L. REV. 809, 819 (1993) ("In general, four procedures have been used to weigh the [*Hilton*] factors in deciding whether to grant the stay: (1) the sequential test; (2) two-alternative test; (3) balancing-of-the-factors test; and (4) the two-tier sliding scale test.").

Thus a clear, bright-line rule that automatically results in a stay of district court proceedings while an arbitrability appeal is pending is preferable to vague, inconsistent discretionary stays applied by the minority

jurisdictions. Bright-line rules in general cost less to administer than interpreting and applying ambiguous rules. *See* A.C. Pritchard, *Government Promises and Due Process: An Economic Analysis of the "New Property,"* 77 VA. L. REV. 1053, 1073 (1991) (discussing the ways that clear rules lower the costs of judicial administration in a variety of contexts). Bright-line rules for stays pending arbitrability appeals are favorable because the discretionary stay test allows for ineffective adjudication. *Cf*. 8 William L. Norton, Jr., NORTON BANKRUPTCY LAW & PRACTICE 3D §170:81 (2012).

CONCLUSION

For all of these reasons, this Court should reverse the rulings of the Ninth Circuit and rule that a non-frivolous appeal from an order denying arbitration automatically stays further proceedings in district court.

Respectfully submitted,

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